



## **JEFFERSON COUNTY**

### **PLANNING COMMISSION**

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#### **JEFFERSON COUNTY PLANNING COMMISSION**

#### **MINUTES FOR JUNE 27, 2007**

- A. OPENING BUSINESS**
- B. FISH & WILDLIFE HABITAT CONSERVATION AREAS**
- C. ADJOURNMENT**

## **A. OPENING BUSINESS**

The regular meeting was called to order at the WSU Learning Center at 6:30 pm by Chair Peter Downey.

Planning Commission members present were Bill Miller, Patricia Farmer, Peter Downey, Bud Schindler, Henry Werch, Mike Whittaker, JD Gallant, Ashley Bullitt and Edel Sokol.

DCD staff present were Joel Peterson, Brent Butler, and Angela Wade (secretary).

There were about 18 members of the public present. Those who signed the guest list were Norm MacLeod, Frank Hoffman, Bill Wheeler, Renee' Bush, Dennis Schultz, John Richmond, Jim Hagen, Diane Johnson, Kathy Dickson, Kenn Brooks, Virginia Crandall and Clark Crandall.

### **Staff Updates:**

Brent Butler said that there will be a BOCC hearing concerning UGA line in, line out changes on Monday, July 2<sup>nd</sup>, 2007.

Brent Butler reported that the first meeting of the No Shooting Ordinance Core Review Committee is tentatively scheduled for July 12<sup>th</sup>, 2007.

Brent Butler reported that the motion passed by the Planning Commission at the June 20<sup>th</sup> meeting requesting a time extension to complete the CAO has also been passed by the BOCC. Mr. Butler read from the letter drafted by chair Peter Downey to BOCC that stated the reasoning for the request for a time extension. In summary, the letter spoke about working with DOE to augment the technical guidance for critical areas in rural settings. Peter Downey said that he didn't want to ask for an open ended time frame, and had requested a two month extension. Brent Butler said that BOCC had approved the request for a time extension unanimously, and the request is now being forwarded to outside council, Mark Johnson, who will request an extension from WEC. If WEC concurs, they will provide written acceptance, which will be forwarded to the Western WA Growth Management Hearings Board. Mr. Butler said that it will take several weeks for a definitive answer. Bud Schindler referred to a recent article in the press that said there was concern that the new timeline would interfere with the Christmas holiday. Mr. Butler responded that the extension is only for two months.

Peter Downey read an excerpt from DOE's response written by Andy McMillan on June 27<sup>th</sup>, 2007. "I understand that the County first made you aware of these conversations during staff updates on June 20<sup>th</sup> and members of the public also commented on these discussions at the meeting. Based on these comments, it appears that some believe that the Department of Ecology guidance is somehow not applicable in rural settings and that perhaps Ecology shares that belief. In fact, Ecology believes that our guidance on

wetlands applies to rural settings as well as more urban land uses. A significant portion of the science we relied upon came from studies set in rural landscapes. Our recommendations include a whole suite of protective measures that apply in different land use settings. Our guidance on buffers, in particular, attempts to take into account the different impacts of different types of land uses, including rural ones and we are very supportive of local efforts to tailor our guidance to local situations.”

Peter Downey said that there had been some misunderstanding about the inapplicability of DOE’s studies to rural settings, and that the focus of additional efforts would be on stewardship. Edel Sokol also read from the letter from Andy McMillan, “However, the primary focus of this effort would be to develop non-regulatory elements such as landowner stewardship programs to augment the proposed regulatory provisions.”

Staff reviewed the updated calendar that includes an additional Planning Commission meeting on June 27<sup>th</sup> and the public hearing on August 8th. The calendar does not yet reflect the prospect of a time extension and may be updated again, once the extension has been confirmed. Brent Butler said that the status of the time extension would most likely be determined by the PC meeting on July 11<sup>th</sup>, 2007.

Brent Butler said that a meeting on the MPR-EIS Comprehensive Plan Amendment MLA06-87 has been tentatively rescheduled for Tuesday, July 31<sup>st</sup>, 2007. Bud Schindler said that he had hoped for a digital copy of the EIS. Mr. Butler responded that currently under discussion is the possibility of leaving the public comment period open until the close of the review of the Comprehensive Plan Amendments. Mike Whittaker asked if July 31<sup>st</sup> would begin the first day of the public comment period. Mr. Butler responded that he can’t answer that question, and that the public comment period starts once the draft is complete, which will hopefully be complete by July 31<sup>st</sup>.

Brent Butler said that the timeline for the Comprehensive Plan Amendment cycle will be complete by the next PC meeting. Joel Peterson referred to the updated calendar that had been provided to the PC and noted the tentative dates there. Mr. Butler said that we have accelerated this process in the past, and these are the last potential dates to complete the review and deliberation under the mandated timeline. Mr. Schindler requested that staff develop a parametric approach to determine if this is a realistic schedule, or if they need to add additional meetings. There was concern from the PC that there is not enough time for deliberation built into this schedule. Mr. Butler said that he will provide an updated schedule including additional dates for deliberation and time for presenters who weren’t able to present before.

**Committee Reports:** None

**Public Comments:**

Dennis Schultz said that there were a few corrections to be made in Report #14. He said that on page 1, line 1 FHWCA should be corrected to FWHCA, and on page 8, line 313,

and the following section should be added after #12: #13. That a notice to title be placed on all parcels affected by the ordinance.

Jim Hagen said that he had concerns about the public process. He referred to an incident at the recent field trip, when a member of the public asked Jill Silver about buffer sizes. Mr. Hagen said that she responded by saying “none of your business.” He also referred to the PC meeting on June 20<sup>th</sup>, 2007 when the PC had been asked to disclose their relations to WEC. Mr. Hagen said that he listened to the PC interview tapes, and heard Planning Commissioner Ashley Bullitt speak about her family’s association with the Bullitt Foundation. Mr. Hagen questioned why she didn’t reveal this association when asked during the meeting. He said that the public deserves straightforward answers to pertinent questions.

Jill Silver responded to Mr. Hagen’s comments by saying that she has long been working with members of the public (farmers, tribes, residents east and west, urban and rural) around environmental sustainability. She said that in regards to the question asked during the meeting, she felt put on the spot and resents being continually attacked when she is trying to work in partnership with everyone involved in these issues. Regarding the Bullitt Foundation, Ms. Silver said that the 10,000 Years Institute, a small non-profit in WA, has a grant from the Bullitt Foundation for research on the use of pesticides on industrial forested land. She said that she will talk more about this if Mr. Hagen wants to bring this topic into this arena. Ms. Silver said that if anyone questioned other associations she may have, she has the constitutional right to free speech and free association.

Bill Wheeler referenced a document that he submitted to the PC regarding buffer widths on protected areas and his suggested solutions.

John Richmond said that the majority report was not written in code language as this approach had been suggested by the advisory committee in light of the limited time frame to complete the report.

## **B. FISH AND WILDLIFE**

Edel Sokol moved for adoption of the following motion: “that Ashley Bullitt is charged with Willful misconduct for violating Section 14- Conflict of Interest: of the by-laws of this committee”.

The by-laws read “Purge the taint”. Members shall disclose all personal benefits, gains, advantages to themselves, friends or immediate family. “ Immediate family means spouses, dependents, anyone residing in the persons household, and anyone within the third degree of consanguinity of the person or person’s spouse: e.g., within three degrees of relationship by blood, marriage, or domestic partner.”

WEC is presently suing the citizens of Jefferson County. Allegations have been made by some citizens that the Bullitt Foundation has contributed to WEC. Ms. Bullitt was also

asked during public comment to disclose any relationship she has to the Bullitt Foundation. She declined to comment.

Furthermore, that Ms. Bullitt is suspended from this body for violating the by-laws because not adhering to the by-laws is wrong and certainly against the democratic process. Bud Schindler seconded the motion.

In discussion Bill Miller said that he doesn't see how either WEC or the Bullitt Foundation benefit from Ashley Bullitt's membership on the PC. Peter Downey said he doesn't think there is a conflict of interest and he resents this motion because it is divisive.

The motion failed, with 3 in favor and 5 opposed and 1 abstention. (3-5-1)

Henry Werch requested fifteen minutes to present an issue pertinent to the entire CAO. Peter Downey suggested presenting it after deliberating Fish and Wildlife.

Mike Whittaker said that the intent and purpose section is too word-heavy and suggested including a Purpose section at the beginning of the CAO, but not one for each section. Peter Downey said that a Purpose specific to Fish and Wildlife is appropriate. Mr. Downey said that the PC will offer recommendations to the code writer, with the intention that he will draft a concise document that puts the general information in the right place.

Staff provided the two reports for comparison in legal format with line numbers so that all PC members could easily refer to the same location.

The PC continued from last week on Report #2, Purposes.

Bud Schindler moved to add A8 to the Fish and Wildlife Purposes, to read "the County encourages voluntary stewardship of critical areas for the protection and enhancement of FWHCA's and their buffers." Bill Miller seconded the Motion.

The motion passed by consensus unanimously.

Peter Downey pointed out that the County's maps are inadequate to the point of being somewhat meaningless as they contain incorrectly defined critical areas.

Henry Werch moved to add language that any designated wildlife corridor must be truthed by an accurate map or on the ground truthing.

Discussion continued about the accuracy of the maps. There was concern over the use of the word "accurate" as there is no way to define the level of accuracy. Ashley Bullitt suggested replacing the word "accurate" with "up to date." Another issue raised was that the maps may need to be validated regularly, or before an action is proposed, because some situations change over time, such as the location of an eagle's nest.

Mike Whittaker said that the report, Wetlands in WA 2005, alludes to inaccurate maps. Mr. Whittaker said that the County has the responsibility to update these maps even though the process is money-intensive, and a database including on the ground validations needs to be started. It was mentioned that some areas are not even mapped, such as the Quimper Corridor and shellfish beds on tidelands. In favor of validation, Bud Schindler spoke about a specific case where a landowner had to hire out for additional delineation where the wetlands had been inaccurately mapped. Mr. Schindler said that if the land had been validated, they would have recognized that it was inaccurate and the burden would have fallen on the creator of the map, rather than on the landowner. Edel Sokol referred to page 8 of Report #14, 2. Site Assessment Requirements. Ms. Sokol suggested adopting this language from line 320. Bill Miller said that this refers to buffer size, and they had been talking about accuracy. Mr. Miller suggested combining the two.

The Commission decided by consensus to send the following two statements to the code writer:

**“Any designated wildlife conservation corridor should have accurate maps or on the ground truthing by the County or a Professional.”**

**“Where a map is used as designation, there must be corroboration on the ground.”**

The PC began discussing page 39 of Report #2.

Bud Schindler moved to strike the language “certain fish, wildlife, and/or plant species” in line 1550 of Report #2 and replace it with “endangered, threatened, or sensitive species of fish, wildlife and/or plants, or species of local importance.” Edel Sokol seconded the motion.

The motion was approved by consensus.

Peter Downey said that he would like to accept things by majority where it is obvious that there is consensus, rather than going through the formal vote.

The Commission agreed to keep Section B of Report #2 on page 39 as it is.

The Commission agreed by consensus to add the word “conservation” to line 1558 of Report #2 to read “Fish and wildlife habitat conservation areas.”

The Planning Commission discussed the classification and designation of FWHCA’s in both reports. There was concern if Report #14 sufficiently satisfied RCW 36.70A.172 that’s worded “preserve or enhance anadromous fisheries.” There was clarification from members of the Committee that both reports do sufficiently meet RCW 36.70A.172. Peter Downey suggested that anything not covered in Report #14 can be added from Report #2 as needed.

The PC moved on to comparison of Standards in Reports #2 and #14. In discussion, some members liked the format of Report #14. Peter Downey said that Report #14 failed

to include shellfish beds and eelgrass beds, and that these were addressed in Report #2. There was agreement that the wording should be consistent in SMP and CAO.

Mike Whittaker moved to accept the language of Report 14, page 5, lines 157-182. Bud Schindler seconded the motion.

Jill Silver, an author of Report #2, said that the paragraph in Report #2, page 40, lines 1578-1589, talks about how fish-bearing streams are typed (other than streams identified as shorelines.) Ms. Silver said that this is classic language used in every ordinance she's looked at. She said the difference is the use of the language "ordinary high water mark" which refers to the highest water mark outside of the bank each year. Ms. Silver said that the ordinary high water mark is more applicable in the context of flooding.

Henry Werch said that this is covered in Report #14, page 10, lines 368-376. Peter Downey said that the difference is that one report is descriptive and the other refers to state regulations. The PC called upon Dennis Schultz. Mr. Schultz said that Report #14 aims to prevent the county from writing in the specifics, and to instead refer to state regulations and laws. Mr. Schultz said that if the specifics were included in the county code, that each time the state made a change, the county code would also need to be changed.

The motion was approved, with eight in favor and one opposed. (8-1-0)

Peter Downey moved to accept language from Report #2, page 41, lines 1644-1650 regarding commercial and recreational shellfish areas, and to give additional instruction to the code writer that was submitted at the June 13<sup>th</sup>, 2007 PC meeting that states "Shellfish aquaculture: Shellfish aquaculture activities within all public and private tidelands and bed lands suitable for shellfish harvest are allowed. Such activities include but are not limited to bed marking, preparation, planting, cultivation, and harvest."

Peter Downey said that WAC requires this and it should be added.

The motion was approved by consensus.

Peter Downey referred to Report #14, page 6, lines 191-195, h) State Natural Area Preserves and i) State Natural Resource Conservation Areas. Dennis Schultz said that someone in the county should verify that there truly are no such areas in Jefferson County.

Peter Downey moved to accept Report #2, page 42, line 1656 regarding natural area preserves and to include language from Report #14, page 8, lines 315-317, excluding the last sentence "Presently there are no areas designated in Jefferson County."

The motion was approved by consensus.

The PC discussed the language of both reports regarding designation of species of local importance. Henry Werch said that he supports the intent of species of local importance, but if the execution poses complications, it may not be practical, and may be contrary to the intent. Patricia Farmer said that Report #14 is too restrictive, specifically the detailed list on page 7, lines 246-286. Ms. Farmer referred to the line 262, "A Management Strategy based on BAS for the species or habitat." Peter Downey also expressed concern with BAS. He said if there is no management strategy, does that mean it's not a species of local importance. Henry Werch expressed concern with line 262 and also with lines 250-257, Identification of the geographic location... Mr. Werch said his discomfort is with how this is carried out, for example, the issue with the maps. Mike Whittaker said that if they are regulating, it should be very clear how and why it's regulated. Discussion continued about a management strategy. Dennis Schultz said that a management strategy could be as simple as fencing off an area, and is specific to each situation.

Peter Downey moved to strike the term BAS from Report #14, page 7, line 261, to read "A Management Strategy for the species or habitat."

Bud Schindler questioned where the management strategy would come from, and suggested that it could be determined by a county biologist. Peter Downey said let's leave it at the county's discretion.

The motion was approved by consensus.

Jill Silver mentioned the reference to species of local importance in Report #2, page 42-43, lines 1686-1720.

Edel Sokol moved to include language from Report #14, pages 6-8, lines 196-313, with the exception of removing the term "BAS" from line 261, and to add language suggested by Dennis Schultz as #13: "notice of title will be placed on all parcels affected by CAO." Bill Miller seconded the motion.

The motion passed with six in favor and three opposed. (6-3-0)

Patricia Farmer referred to Report #2, page 64, line 2479 "Special Status Fish and Wildlife..." She said this is excellent information that is included in other county ordinances. Peter Downey said that it would be problematic to the code writer to include the entire list. Henry Werch said that this is too detailed to list in the ordinance and suggested that the County could publish supplemental guidance for landowners.

Deliberation at the next meeting will begin with site assessment, Report #14, page 8, line 320, Report #2, page 43, line 1722.

Henry Werch thanked the staff for providing line numbers on the reports.

## **Public Comment:**

Diane Johnson referred to the Commission's decision on species of local importance. She pointed out that this does not apply to endangered or threatened species that are defined by federal standards. She said that we have to be very careful in designating these species. For example, if deer would be considered a species of local importance, it would affect everyone in the county. Ms. Johnson said that's why this section of Report #14 was written so detailed.

Dennis Schultz agreed with Diane Johnson's comments. He added that species of local importance is a very powerful tool for organizations that want to protect wildlife.

Jill Silver thanked the PC for the work they have been doing to mesh the two reports together. She pointed out a clarification regarding endangered, threatened, sensitive and local species. Ms. Silver said the habitats of these species are regulated locally, at the county level, but are designated at the state and federal level. In regards to the mapping issues, she said that there's confusion between the habitats that are critical areas and species that move. Ms. Silver said that there is an accuracy issue with the maps, but the Geographic Information System (GIS) layers (wetlands, soil, road, aquifer recharge, typed streams, etc) can be expected to have higher levels of accuracy. She said she agrees that the maps should be updated, but to remember that some layers are more up to date than others. Ms. Silver said that species will move as conditions change and that if a certain habitat is designated and years later the species isn't found there, that doesn't mean it's not habitat anymore. She said it needs to be viewed more holistically, that animals move in and out of areas, and connectivity through these habitats needs to be maintained, not just for threatened and endangered species, but for all species that currently live in the county.

Jim Hagen said that he heard the code writer request very specific instruction from the PC. Mr. Hagen said that tonight he heard the PC say "forward both to the code writer and let him sort it out." He suggested that the PC avoid sending optional reports, but stick to the specifics, such as they did in the last motion.

Roger Short referred to the saying "compliance or defiance." He said he's heard this many times and landowners' actions are often driven by a desire to avoid trouble. Mr. Short said that the best way to protect wildlife is to provide landowners with a sense of pride and incentives to maintain habitat.

Bill Wheeler referred to the comments he submitted that pertain to habitats of local significance and establishing critical areas outside of riparian buffers. He said that we don't have protocols for determining connected wildlife corridors on the ground. Mr. Wheeler said the difficulty is in asking someone at DCD to go to the landowner and designate these areas. He said this will end up in court, and that a qualified person needs to do this. In reference to the maps, he said that they are developed with technical specifications that show the limitations of the map. He said that difficulty arises when those maps are used for application on the ground, because anyone could plead the case

that the limitations of the map were violated. He urged caution when determining if a map is good enough, or accurate.

Jim Tracy commented on the maps. He asked if the PC had asked someone in the permitting department how the maps are actually used. He said he's not aware of the maps being used for regulatory purposes, but only for illustrative purposes. Mr. Tracy said that the permitting person always looks at the land. He said that the PC spent a lot of time on an issue that is not relevant to the CAO.

Kenn Brooks said that the local papers announced the formation of the Olympic Stewardship Foundation. He said that their focus is on stewardship of the land, not on how critical areas are developed. He said that he's pleased that the PC adopted prescriptive means of identifying species of local importance. Dr. Brooks said that he spoke again with Andy McMillan from DOE. He said that DOE agreed that they want to sit down with the County and majority committee to find a stewardship based model. Dr. Brooks said that during the wetlands field trip, he asked a County person for a score on the wetland on port property. He said that she inaccurately answered 10, and that the wetland actually scored somewhere between 16 to 20. He said that using the scoring system requires both training and experience and that wetlands delineations are subjective, even amongst experienced people. Dr. Brooks said that he and Katherine Baril have spoken about a program that provides an informal way to address citizen concerns with their interaction with DCD. In regards to mapping, he said that many counties replace original inaccurate maps with delineation, and this is a way of updating the maps. He suggested that the county quickly begin incorporating staff and consultant observations into a database. Dr. Brooks said that over the next three years, the goal of the DOE initiative is to demonstrate what a stewardship program can do on the ground. He also said that low density development science deals with agricultural land, not residential.

Larry Bonar said that stewardship is a voluntary program to comply with environmental conditions to improve or retain environmental standards. He continued that in the US, the history of voluntary acceptance of environmental standards is abysmal. He said that we need a solid base of prescriptive ordinances.

Renee Bush said that she's confused by the renaming of the committee reports. She doesn't understand why they're being renamed as Report 1 and Report 2 rather than the majority and minority reports. She said that the committee reports truly do represent the majority and minority as stated by the by-laws.

### **C. ADJOURNMENT**

Peter Downey said that they will continue with Fish and Wildlife at the next meeting. He said that there is science to support both sides, and he requested that everyone think about where the truth in the middle lies. Henry Werch said that his handout addresses this. Peter said this can be addressed at the next meeting.

Mike Whittaker moved that the receiving of new planning commissioners come at the first of the year when the work begins. Peter Downey said that this motion will be forwarded to next week's agenda.

The meeting was adjourned at 9:35 pm.

**D. APPROVAL OF MINUTES**

These minutes were approved this \_\_\_\_\_ day of July, 2007.

\_\_\_\_\_  
Peter Downey, Chair

\_\_\_\_\_  
Angela Wade, Secretary

